Ombudsman
ONTARIO
ONTARIO'S WATCHDOG
OMLET
Open Meeting Law
Enforcement Team
ANNUAL
REPORT

Ombudsman
ONTARIO
ONTARIO'S WATCHDOG

# Under the Sunshine Law
## – tips for closing meetings

**During any informal gathering of members of council, committees or local boards:**

- Take care not to enter into discussions that will further decision-making or lay the groundwork for decisions.

**Before proceeding into a closed session, consider:**

- Was notice of the meeting – and of the closed session – provided to the public in advance?
- Has a resolution been passed in open session, stating that a closed session will be held, along with reference to the subject to be discussed and the applicable exception under the *Municipal Act, 2001*?
- For "education or training" sessions, is the subject matter to be discussed appropriate for this exception and does the resolution specifically cite section 239(3.1) of the *Municipal Act*?
- Do all the issues to be considered *in camera* fall within one or more of the exceptions outlined in s. 239?
- Are detailed records – or ideally audio or video recordings – being kept?

**While in closed session, consider:**

- Are all the matters being discussed authorized in the resolution to proceed *in camera*?
- Are any votes taken only for the purpose of procedural matters or for giving directions or instructions to officers, employees or agents, as authorized by s. 239(6)?

**When reconvening in open session, consider:**

- Has as much information as possible been reported to the public about what occurred during the closed session (without undermining the reason for going in camera)?

*When in doubt, open the meeting.*

If you have a concern about a closed meeting, contact OMLET at **1-800-263-1830** or **info@ombudsman.on.ca**.

We can provide general information on the open meeting requirements.

To make a complaint, complete a complaint form at www.ombudsman.on.ca or call **1-8[illegible]-263-1830.**

Copies of this card, or the *Sunshine Law Handbook*, can be obtained by phone or email as above, or at the **Office of the Ontario Ombudsman, 483 Bay Street, 10th Floor, South Tower, Toronto, Ontario, M5G 2C9**

OMLET

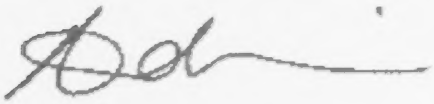
October 30, 2012

The Honourable Dave Levac
Speaker
Legislative Assembly
Province of Ontario
Queen's Park

Dear Mr. Speaker,

I am pleased to submit my Annual Report on the work of my Open Meeting Law Enforcement Team (OMLET) for the period of April 1, 2011 to August 31, 2012, pursuant to section 11 of the *Ombudsman Act*, so that you may table it before the Legislative Assembly.

Yours truly,



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# Ombudsman's Message

PHOTO BY BRIAN WILLER

I am pleased to issue this first Annual Report on my Office's work in enforcing Ontario's open meeting law, a responsibility we took on as of January 1, 2008.

Why a separate report? Because our experience, in our **fifth year** of enforcing the "Sunshine Law," has shown that it clearly deserves its own spotlight.

Across the province, we have seen how passionate Ontarians are about transparency in their local governments. Yet we have seen a marked disparity between municipalities in how they interpret the rules. Some are strictly accountable to their citizens and embrace openness in their operations. Some are shockingly secretive, suspicious and resentful of the very idea they can be investigated. And many are well-intentioned but baffled by the complexities of the law.

**It is time to shine a strong light on the process itself, to answer persistent questions from the public and elected representatives – all in the spirit of the law.** This report provides an opportunity to review the state of the "Sunshine Law" in Ontario, to focus on the best and worst practices we have observed in municipalities, and to clarify the open meeting rules and our Office's investigative procedures.

## Holding the Doors Open

Ontario's "Sunshine Law" evolved slowly.

It has always been the law in Ontario – since before Confederation, in fact – for municipalities to hold regular council meetings that are open to the public. This requirement was eventually expanded to include local boards, as well as special and committee meetings.

But until 2008, the only recourse for enforcement of the open meeting law was through the courts. This was not a realistic option for most citizens, meaning municipal officials were rarely held to account if they closed meetings to the public illegally.

As of January 1, 2008, Ontarians were finally given the right to request investigation of meetings they believed violated the open meeting requirements or municipal procedure by-laws as laid out in the *Municipal Act, 2001*.*

> The fact that we are even setting up the notion that the Ombudsman can look at municipal issues is a bright step forward.
>
> – John Gerretsen, then Minister of Municipal Affairs and Housing, speaking about changing the *Municipal Act* to allow public complaints (quoted in the *Hamilton Spectator*, June 26, 2006)

* The City of Toronto has the same open meeting obligations under the *City of Toronto Act, 2006*.

Under the Act, all municipalities must have an investigator for complaints about closed meetings – by default, it is the Ombudsman's Office, but they can also appoint an investigator of their choice. In addition to investigating complaints about Ontario's 500-plus provincial governmental organizations, my Office is the investigator for some **191** of Ontario's **444** municipalities.

Using our existing resources, my Office took on this additional responsibility by establishing a team of investigators, early resolution officers and legal counsel that we call the **Open Meeting Law Enforcement Team – or OMLET**. The name was intended to be memorable, given that a large part of the team's work, aside from investigations, involves reaching out to municipal councillors and the public and raising awareness about the Sunshine Law.

We have received more than **500** complaints about municipal meetings since the start of 2008. Of those, **313** were about municipalities where we are the investigator; the rest were from municipalities that had appointed someone else, and were referred accordingly.

The good news is that most of these complaints could be resolved quickly, without need for a full investigation. And where investigations were warranted, in **most** cases we found municipalities were correctly following the Sunshine Law. When they closed meetings to the public, they did so only in the narrow circumstances allowed under **Section 239** of the Act.*

> "The new law is doing what it was supposed to. There's more general awareness that politicians have do to their business in public, councillors are getting called on it when they don't, and promises are being made to do better in the future."
>
> – Editorial, *Niagara Falls Review*, June 7, 2008

This report covers our busiest period yet – from **April 1, 2011 to August 31, 2012**. In that time, we received **128** complaints and found **45** violations of the Sunshine Law – including meetings that should not have been closed to the public and numerous violations of the *Municipal Act*, procedural contraventions and poor meeting practices. These ranged from cases where councils illegally voted behind closed doors (in one case, to raise their own salaries), or where they kept almost no record of what took place in secret.

In several other cases, I found municipal officials strayed too close to the edge of the law, violating the spirit of it, if not the letter. In cases like these – such as when councillors held suspicious but not illegal gatherings over lunch or breakfast – I offered constructive warnings about avoiding such optics in future. In **34** cases, I suggested the municipality make improvements by adopting best practices.

* Statistics and summaries relating to our municipal investigations from January 1, 2008 to March 31, 2011 can be found in the corresponding Annual Reports on our website at: http://www.ombudsman.on.ca/Resources/Annual Reports.aspx Reports on individual municipal investigations are on our website under Municipal Investigations. http://www.ombudsman.on.ca/Investigations/Municipal-Meetings/Cases.aspx

The issues in these cases and individual summaries are discussed in the **Themes** and **Case Summaries** sections of this report.

In all of these cases, whether the law has been breached outright or the municipality's practices are simply not up to par, I make recommendations and require the municipality to make them public. The focus is not on laying blame but on improving local government transparency by ensuring the law is being upheld and recommending best practices.

My overall impression, midway through our fifth year of doing this work, is frankly mixed.

I believe the Sunshine Law was a significant step toward enhancing the credibility of and public confidence in municipal governments. Blatant violations of the law are relatively rare. But municipal responses to complaints and investigations vary from city to city and town to town. Confusion among councillors about the definition of a "meeting" is still widespread.

There is still a great deal of work and education to be done, and I hope this report helps meet that need.

## Truth and Consequences

One of the most misunderstood aspects of our Sunshine Law is the consequence of breaking it – or lack thereof. In this respect, Ontario lags behind jurisdictions in the U.S., whose Sunshine Laws are long established, and much tougher.

As former United States Supreme Court Justice Louis Brandeis once observed, **"Sunlight is the best disinfectant."** In some states, the courts can levy substantial penalties when meetings are closed illegally. In Arizona and Iowa, violations of open meeting laws may result in fines against the responsible officials, as well as removal from office. In Illinois, violation of open meeting requirements is a criminal misdemeanor, carrying a maximum 30 days imprisonment and/or a fine of $1,500.

Ontario has no such penalty. As a closed meeting investigator, I am restricted to reporting the results of my investigations to the municipality, local board or committee at issue, and making recommendations to redress concerns I identify. (The same is true for other investigators that municipalities might appoint in lieu of my Office.)

Municipal officials are free to accept or reject my recommendations. My only power remains the power of moral suasion. Municipalities are required to make my reports available to the public, and elected officials must ultimately answer to voters for their conduct.

> I wish the legislation had gone a little further and put in some penalties [for politicians who break the law].
>
> – Caroline Di Cocco, then MPP for Sarnia-Lambton (L), who proposed the private member's bill on open meetings that was partly adopted into the *Municipal Act* complaints system, quoted in *London Free Press*, January 8, 2007

The effectiveness of my recommendations rests largely in the willingness of municipal officials to embrace the principles of openness, transparency and accountability reflected in the Sunshine Law.

Some have fully co-operated with our closed meeting investigations, used them as learning opportunities, and improved their practices. The **Town of Amherstburg** is a good example. After I issued my report *Behind Closed Doors* in December 2011 – in which I concluded Amherstburg council had repeatedly contravened the law – the town incorporated my recommendations into a new policy for closed meetings.

> It was always our intention to comply with the Act. Transparency and compliance is something we try to do. We'll attempt to do a better job.
>
> – Mayor Wayne Hurst, Town of Amherstburg, quoted in *Windsor Star*, January 11, 2012

Such change doesn't happen overnight. That report marked my **second** review of closed meetings in Amherstburg – and we reported a third time in July on additional complaints. But in the third case, we found no violations. In fact, I commended town council on its co-operation and improved processes. Amherstburg is a clear illustration of how familiarity with the law and the investigative process leads to better practices and more open government.

Other municipalities have not been so co-operative. Council members and solicitors for the **City of Hamilton** and the **City of London, Ont.** have at times been publicly critical of aspects of our investigative process. And the **City of Greater Sudbury** council proved the least co-operative to date, when 10 of its 13 members refused to be interviewed in our June 2012 investigation.

## How We Work

Most of the municipalities we have dealt with since 2008 have appreciated that our Office has straightforward, credible procedures that come with 37 years of experience in overseeing the vast provincial government. Several of those that originally opted out of using our Office as their investigator actually reversed that choice, recognizing that our services are free, fast and effective.

For those who may be unfamiliar with how we work, a brief review is in order.

As an Officer of the Ontario Legislature, I am independent of government. My powers are set out in the *Ombudsman Act*. We follow basic principles of accessibility, confidentiality, impartiality and investigation that are adhered to by ombudsmen around the world. The services we provide are free of charge to all complainants and municipalities.

> André Marin's office has proven extremely effective at investigating issues of maladministration in government, agencies, boards and commissions... Best of all, the Ombudsman does not charge an annual retainer, or a daily fee, or expenses.
>
> – Editorial, *Sault Star*, November 28, 2007

Throughout my time as Ombudsman (I was appointed in 2005 and reappointed in 2010 for a second five-year term), the provincial government has overwhelmingly adopted and implemented my recommendations and we have received excellent co-operation from the myriad Ontario agencies we have investigated.

The same has been true of most municipalities. However, in some cases, OMLET staff and I have run into resistance from municipal councillors, mayors, clerks and solicitors who have questioned our longtime practices, and we have faced protracted legal posturing and wrangling in what should be straightforward investigations.

By clarifying publicly how we do things, I hope this report can help streamline the process for all concerned.

## Free and Confidential

Anyone can complain to the Ombudsman about a provincial service or a closed municipal meeting. There is no charge to complain, because there should be no barrier to discourage complainants. Our services are free to all complainants **and** to all municipalities.

In this, we stand in contrast to the investigators hired by some municipalities, who charge a retainer and hourly fee for investigations (upwards of **$160** per hour).

> The Ombudsman doesn't cost any money. [Local Authority Services] will cost $1,250 per day… This is like hiring a consultant when you don't need a consultant.
>
> – Gunter Neumann, then councillor for the Town of Meaford, quoted in *Meaford Express*, November 29, 2007

Some municipalities also charge a fee to anyone who complains about a closed meeting; in some cases it is refunded if the complaint proves to be warranted. Refund or not, this goes strictly against the principles of ombudsmanry and, in my view, the spirit of the Sunshine Law. There should be no financial barrier to making complaints.

All complaints to my Office are strictly confidential. This is a hallmark of ombudsman practice across Canada and throughout the world, and is enshrined in the *Ombudsman Act*. Everyone must feel free to complain without fear of reprisal. Their identities are protected and the investigation is conducted in private.

Anyone can complain about a closed municipal meeting; the complainant does not necessarily have to be a resident of the municipality. Complainants since 2008 have included private citizens, members of interest groups, journalists and even municipal staff and councillors themselves. But no matter who it is, the complainant's identity is **not** germane to the single issue at stake: Was there a closed meeting and was it within the Sunshine Law rules or not? Our findings are wholly based on the facts of the case, not the identity of the complainant.

Confidentiality not only protects complainants from attack and reprisal, it ensures the process is apolitical and allows my Office, as an independent and objective investigator, to determine the merit of the complaint without the case being influenced by the personalities involved.

Despite this reality, some municipal officials have publicly decried this practice. In March 2012, some councillors for the **City of London, Ont.** were upset that they could not be told who complained about them gathering for lunch prior to an important council budget meeting. They insisted they had a "right to face our accuser" and disparaged us for investigating "anonymous" complaints. They suggested that the complaints might be politically motivated on the part of "sore losers" on council over some past grievance.

Similar inflammatory and intemperate remarks have been made by other councillors since 2008. Clearly, this behaviour flies in the face of the principles of accountability and transparency embodied in the Sunshine Law.

Indeed, these councillors' disparaging remarks only serve to reinforce the need for protecting complainants' identities, so no one is deterred from coming forward and their motives are not publicly maligned.

## Fast, Fast Relief

Whenever possible – whether it's a complaint about a provincial agency or a closed municipal meeting – we try to resolve matters through preliminary fact-gathering and communication with the people involved, without resorting to a formal investigation and the full range of our powers.

OMLET is no exception – the team resolved **50%** of all complaints within **two months** in municipalities where the Ombudsman is the investigator.

Quick resolution of a complaint benefits everyone. It is part of how all ombudsmen operate, and is overwhelmingly welcomed by the provincial organizations and municipalities we oversee.

> I was quite amazed how quickly [the Ombudsman's] staff could grasp the complexity of the subject.
>
> – Mayor Ray Millar, Tiny Township, quote in *Midland Free Press*, December 29, 2011

It was therefore quite baffling when, in January 2012, the **City of Hamilton** opposed this approach after we resolved two cases through informal contact with city officials. The city's then solicitor criticized this practice in a published report, despite its demonstrated efficiency. I remain hopeful that cities will appreciate in future that, where warranted, early case resolution can be an expeditious, non-adversarial and cost-effective process.

## When We Investigate

If my Office launches a formal investigation of a closed meeting complaint, it is because we have reviewed the issue and available facts, and determined that a full inquiry is necessary to ensure that the municipality has complied with the law. The complainants are not "anonymous" – their identities are known to our office but protected.

Not all complaints result in a full investigation; **in fact, few do**. We have discretion not to investigate when we consider it unnecessary or improper, including if we determine that a complaint is frivolous or vexatious.

When we **do** investigate, it is after a thorough review to determine that the issue is serious. And although many OMLET investigations ultimately do not find any violation of the Sunshine Law, that does not mean the complaints lacked merit or that the investigations were not justified. In fact, many such investigations have proven to be very constructive, uncovering less-than-best practices that municipalities willingly improved.

It shows that someone is watching. The 'same old' no longer applies. Individuals will be keeping politicians honest.

– Paul Tetley, residents' association president, quoted in *Hamilton Community News*, February 23, 2012

Our investigations are evidence-based. We review any record, notice or documentation relating to the closed meeting in question, along with the municipality's procedure by-law. We interview those who were present to determine exactly what was said behind closed doors and whether or not the meeting fell within the exemptions outlined in the *Municipal Act*. Our investigators are experienced and professional, and my findings are based purely on the facts that are gathered in this process.

## Lawyering Up

Despite the lack of penalties or legal consequences for violating the Sunshine Law, some municipal officials have seemed determined to view our OMLET investigations as adversarial in nature. In several cases, councillors reflexively insisted that they would not be interviewed for our investigations without their own lawyer present. They – and in some cases, municipal lawyers – adopted an antagonistic stance, threw up all sorts of technical roadblocks, and slowed investigations to a glacial pace.

In April 2012, **City of London, Ont.** council went so far as to approve reimbursement of any legal fees paid by councillors who sought legal representation during our interviews about their lunch meeting – although in the end, none took up this offer. One, however, publicly likened the investigation experience to being in a "police state."

My investigations are not adversarial or prosecutorial. They are simply fact-finding exercises. **It is completely unnecessary for witnesses to be represented by lawyers during Ombudsman investigations.** We do hundreds of interviews in provincial investigations each year with no lawyers present. There is no right to a lawyer in such circumstances, as the witness is never detained or facing arrest. There is no individual interest at stake that would warrant legal representation.

Then there is the question of the municipality's own lawyer. In our investigation of several closed meetings by council for the **City of Greater Sudbury** in late 2011, all council members initially asked that the city solicitor be present in their interviews to represent them. We did not allow this – for good reason.

Under the *Ombudsman Act*, my investigations must be carried out in private. Consistent with our Act, and in order to protect the integrity of our process, we do not permit municipal representatives, including legal counsel acting on behalf of a municipality, to be present during our witness interviews.

Our interview practice encourages witnesses, including those wishing to "blow the whistle" on questionable closed meetings, to be candid and open with our investigators, and also minimizes the potential for outside influence on testimony, whether consciously or unconsciously. A city solicitor present at such an interview would be conflicted – unable to represent both the individual's interests and the city's interests.

In the **Sudbury** case, despite being repeatedly advised about this practice, only three of the 13 council members and the city clerk agreed to be interviewed; the rest refused to proceed without the city's solicitor. It was the worst failure to co-operate I have seen.

> It's ridiculous to bring lawyers to an Ombudsman's investigation, as Marin observed. His office does not arrest or charge people, nor does it prosecute anyone. In such a case, Marin simply concludes whether a meeting should have been held in public. Why would the city need to tie up its lawyers for such a simple procedure?
>
> – Brian MacLeod, *Sudbury Star*, September 1, 2012

Fortunately, **most** municipalities have co-operated fully with us since 2008. Some have even shared material with us that was subject to solicitor-client privilege – even though they are entitled not to – because they realized it was in the public interest, and there was no risk of improper disclosure. My staff and I are bound by the *Ombudsman Act* to keep such information confidential. We are literally sworn to secrecy. If we review a closed meeting where legal advice was rendered, the privileged information itself will not be released. We simply report that we reviewed the information and concluded that the closed meeting was – or was not – properly held.

## A Chance to Comment

Consistent with the *Ombudsman Act*, when I issue a report on an investigation, my Office gives relevant officials an opportunity to review and comment on my preliminary findings, conclusions and recommendations before the report is finalized and made public. This goes for OMLET investigations as well.

Prior to receiving a copy of a preliminary report, officials must sign a pledge to ensure the confidentiality and integrity of our investigative process is preserved. They must keep the report confidential and it may only be viewed and discussed amongst others who have signed the undertaking. The preliminary report remains the property of my Office, cannot be copied and must be returned by a set date.

This process ensures the confidentiality provisions of the *Ombudsman Act* are respected, while at the same time allowing the organization that has been investigated an opportunity to comment on the preliminary draft before a final report is released.

Although hundreds of provincial organizations and most municipalities have had no issue with this process, some municipal officials have declined to accept my preliminary reports on closed meetings because of technical procedural concerns. A few have resisted based on their (or their lawyers') interpretation of access-to-information requirements. My position on these matters was set out in my April 2009 report *Pirating Our Property*, which resulted from a closed meeting investigation in the **City of Oshawa**. In short, my view, and that of the Office of the **Information and Privacy Commissioner**, is that absolutely nothing in the *Municipal Freedom of Information and Protection of Privacy Act* prevents municipalities from complying with our preliminary report process, and we expect them to do so. If municipal officials decline, I issue my final report without their input.

> The stand the ombudsman has taken is very important. He acts as a safeguard of the public's right to be informed about the workings of government. He could have chosen to ignore the City's antics rather than expose them to the light of public scrutiny, but in doing so he would have abandoned his responsibility to the citizens of Ontario and acquiesced to political bullying.
>
> – Joanne Burghardt, *Oshawa This Week*, April 29, 2009

## Getting the Word Out

When I issue a final report containing my analysis of the facts, my findings and recommendations, I send it to the municipality to be made public. In the interest of transparency and efficiency, I ask municipalities to make my reports public as soon as possible, and no later than at their next council meeting. OMLET staff follow up with municipalities to make sure this is done.

Once the municipality has publicized my report – usually by placing it on its website – my Office also publicizes it by posting it online at www.ombudsman.on.ca. As with all of our reports and public activities, we use various means of communications to make sure the news is disseminated to as many Ontarians as possible.

Today, this means using social media. In addition to putting out news releases as warranted, speaking to journalists and posting reports on our website, my Office uses Twitter, Facebook, YouTube and other types of social media to engage with the public. We have done this for several years to keep stakeholders abreast of our work, keeping people informed of the status of our investigations. OMLET cases are no exception.

'He is probably Tweeting about this right now,' said [Councillor Brad] Clark of the social media-savvy ombudsman.

– *Hamilton Spectator*, February 4, 2012

Ombudsman reports are meant to be read. Since my only power is moral suasion, it is crucial that I inform the public about my investigations and recommendations. **Municipalities always have the option to disagree with me, but a public report puts the onus on them to explain why.** In most cases – provincial and municipal – my recommendations have been accepted.

Communicating what we can about the process – while respecting confidentiality – adds to the credibility and transparency of our work. We have found social media to be ideal for this.

Since 2009, I have personally operated my Office's Twitter account (it states: "André Marin tweets personally unless otherwise noted"). I find it an invaluable tool for informing and engaging the public on all sorts of issues. Municipal cases in particular generate a lot of discussion on Twitter, where many Ontario communities have active users who follow local government closely.

I let people know via Twitter about developments that wouldn't warrant a traditional press release – for example, that we have sent investigators to a particular municipality, or that we have completed a preliminary report. The response to this has been very positive – except for a few councillors like those for the **City of Greater Sudbury**, who were outraged when I tweeted about our investigation there in June 2012. One councillor even cited my tweets as a reason for refusing to be interviewed.

Those familiar with Twitter know that tweets are typically brief, informal and direct. It is a highly efficient way of communicating, accepted by hundreds of millions, and I encourage municipal officials to embrace it as part of the modern media landscape. Social media are here to stay until even more innovative methods of communication take their place, and I remain committed to using them.

## For the Record

Municipalities could also embrace technology to streamline the entire closed meeting investigative process – by simply making audio or video recordings of closed meetings.

The *Municipal Act* states that councils, committees and local boards "shall record" the proceedings. Traditionally, this has been done through written minutes. Over the past four years, I have found municipal record-keeping to be one of the biggest impediments to quick and thorough investigations. There is no consistency in record-keeping practices across the province – it varies from good to bad to non-existent, depending on the city, town or village.

Some Ontario municipalities do audio or video record their open meetings, and/or have them broadcast publicly. This approach helps to ensure that there is a clear, comprehensive and accessible meeting record. However, when meetings are closed, all too often we have only scant and cryptic minutes to work with. In many municipalities, the clerk is left scribbling random notes. In some, no official closed meeting minutes are even retained.

This means OMLET investigators are regularly forced to subject councillors to extensive interviews, and then to piece together their often conflicting, incomplete and uncertain recollections of what went on behind closed doors. It is time-consuming, and often needlessly so.

**Audio or video recording of council meetings should be routine – not just the open sessions, but the closed ones too.** This would assist immeasurably in ensuring officials do not stray from the legal requirements once they retreat behind closed doors, and would provide a clear, accessible record for investigators to review. Many investigations would take no longer than the time needed to review the recording – and a great deal fewer interviews would be required.

> If we have an audio recording, it provides a transcript that can remain on file and simply be handed to the Ombudsman if there is an investigation. I think this provides for incredible transparency.
>
> – Louise Parkes, then councillor for the City of Oshawa, quoted in *Oshawa This Week*, March 11, 2012

> I think it's a brilliant idea.
>
> – City of Hamilton Councillor Sam Merulla, quoted in *Hamilton Spectator*, February 24, 2012

This is far from a novel idea. Several U.S. municipalities **require** audio or video recording of closed meetings, and other jurisdictions have chosen to do it to enhance the accountability and transparency of their proceedings. For example, in Illinois, all public bodies must make recordings of all meetings; in Iowa, closed sessions must be audio-recorded; and in Nevada, public bodies must record audio of open and closed meetings or use a court stenographer to transcribe the proceedings.

Such a practice is in the interest of all of Ontario's municipalities. It would demonstrate they are confident they are following the rules, and would inspire community trust in the transparency and accountability of local government. It would also save time and resources for all of us.

I encourage all municipalities to begin audio or video recording closed meetings. I will continue to monitor municipal record-keeping practices closely, and if they do not improve, I will consider recommending that the Ontario government make legislative changes to require it.

## Watchdogs Have Teeth

Whether my investigation is provincial or municipal, the last word always remains with the body under investigation. I cannot enforce the implementation of my recommendations. In municipal cases, **councils reign supreme**.

Not only can they choose not to implement my recommendations, they (unlike provincial bodies) can even choose not to have me as their watchdog.

However, they cannot opt out of the Sunshine Law. The public has the right to complain about closed meetings, and municipalities must ensure those complaints are investigated. **They cannot opt out of accountability.**

What's more, if they choose to have the Ombudsman's Office as their investigator, benefiting from our proven record as free, fast and credible, they cannot opt out of our process. Like the thousands of provincial officials we oversee, they must co-operate with my investigations, as required by the *Ombudsman Act*. They cannot opt out of co-operating.

And while the *Municipal Act* carries no penalty, the *Ombudsman Act* does. Failure to comply with my lawful requirements is a provincial offence, punishable by a fine of up to $500 and/or imprisonment for up to three months. In 37 years, there has never been a prosecution under this provision. I have never exercised my authority to lay charges in response to lack of co-operation, and I would prefer not to do so. But **I am prepared to use all available means to ensure co-operation with my investigative process in future, to preserve its integrity and uphold the law.**

As Ombudsman, my interest is the public interest – ensuring that municipalities respect the law. Municipal officials must understand that the investigation of public complaints about their meetings is part of the responsibility that comes with their positions in local government.

Ontarians expect all members of local councils, boards and committees, as well as municipal staff and solicitors, to make the Sunshine Law provisions of the *Municipal Act* work. This can only happen through consistent, rigorous adherence to the principles of openness, transparency and accountability.

André Marin has deliberately and methodically interpreted the Act in a manner where we're going to be open and transparent.

– Councillor Brad Clark, City of Hamilton, quoted in *Hamilton Spectator*, January 13, 2012

# Year in Review

## Themes Emerging from Investigations – April 1, 2011 to August 31, 2012

As of August 31, 2012, the Ombudsman is the closed meeting investigator for **191** of Ontario's **444** municipalities.

In the time period covered by this report, our Office received **172** closed meeting complaints. Of those, **128** were about municipalities where the Ombudsman is the investigator (the rest were referred accordingly).

The Ombudsman designates the Open Meeting Law Enforcement Team (OMLET) to review and investigate closed meeting complaints. OMLET members also engage in educating the public and municipalities about open meeting requirements.

In investigating so many complaints, we find that common themes emerge, often indicating wider problems with councils flouting or merely misinterpreting the law. Here are the main themes of our investigations in 2011-2012. Individual cases are discussed in the **Case Summaries** section of this report.

## Out to Lunch or Against the Law?

During the time period covered by this report, we received complaints about lunch meetings in the **Municipality of Grey Highlands** and **City of London**, and a breakfast in the **City of Hamilton**. The question is, when councillors break bread together, is that a "meeting"?

The Ombudsman has determined, based on study of the *Municipal Act* and relevant case law, that if members of a body come together **for the purpose of exercising the power or authority of the body, or for the purpose of doing the groundwork necessary to exercise that power or authority**, then the gathering should be considered a "meeting" – and therefore subject to the Sunshine Law rules.

This distinction is not always clear. But what is clear is that when members of councils, local boards and committees go to restaurants together, they attract public attention and speculation. People become even more suspicious if the gatherings are in close proximity to formal meetings where controversial decisions are made.

We have had several complaints of this nature over the past four years. Typically, we must ask, was the gathering purely social in nature, or was it an illegal closed meeting where municipal business was advanced away from public view?

To date, the Ombudsman has found that none of these mealtime confabs violated the open meeting rules. But, as he has repeatedly warned, they serve as cautionary tales for municipal officials, who should always be attuned to how such behaviour might appear to the public.

> Let's be clear: This was never about who was having 'din-din' with whom. This was about the conduct of public officials who have taken a vow to uphold rules that pertain to their position. And one of them, very clearly, relates to when and how elected officials are to meet and to conduct themselves when they do.
>
> – Phil McLeod, *London Community News*, August 9, 2012

It is generally healthy for municipal officials to socialize together, get to know one another and engage in informal discussions about what they do. There is nothing to prevent them meeting for social purposes. But if enough of them come together to make "quorum," with the legal authority to conduct municipal business, they must ensure that their informal exchanges are **restricted to social topics**. This is a fine line to walk, and the temptation to discuss municipal issues may prove overwhelming.

They must tread carefully. If they exercise their power or authority – or lay the groundwork to do so – whether it is at a restaurant or even through informal "serial" discussions, they will find themselves in violation of the *Municipal Act*.

## Blinded to the Light

Sometimes officials simply don't realize that the Sunshine Law applies to them and their meetings – and they have violated it. This appeared to be the case with two municipalities this year.

A quorum of the council for the **Township of Howick** met to discuss a contract with a third party, and the entire personnel committee for the **Town of Kearney** interviewed a prospective employee – both without realizing they were required to observe closed meeting procedures under the *Municipal Act*.

## Whose Meeting Is It?

A variation on this theme involves council members attending meetings arranged by other bodies. If a third party invites council, local board or committee members to attend a private meeting, the municipal officials may still be required to comply with the open meeting rules.

The Ombudsman concluded that the council for the **Town of Fort Erie** engaged in improper closed meetings when it met with the Fort Erie Economic Development and Tourism Corporation, discussed its strategic plan and priorities, and proceeded to lay the groundwork for future council decision-making. Similarly, council for the **Township of Georgian Bay** broke the rules when it participated in a meeting arranged by a local cottagers' association and solicited suggestions on various municipal initiatives.

The Ombudsman also found that Council for the **City of Elliot Lake** violated the *Municipal Act* when a quorum of council attended a meeting of the Elliot Lake Residential Development Commission, and a meeting of the Nuclear Waste Management Organization, both in April 2012. Neither meeting was open to the public. At both meetings, although they were hosted by third parties, council clearly came together to lay the groundwork for future decision-making. As such, they did not comply with the Sunshine Law, and the Ombudsman urged that such meetings in future follow the open meeting rules.

## This Means You, Too

Occasionally, we run across local boards or committees that do not realize that they – like councils – are subject to the Sunshine Law.

If 50% or more of the members of a municipally-created entity are also members of councils or local boards, the body is typically considered a "committee" subject to the open meeting rules.

For example, we reviewed the **City of Clarence-Rockland**'s Procedure of Council Review Committee, which was assigned to circulate and obtain comments on a new procedure by-law. The committee was composed of four members of council and two municipal staff. The Ombudsman found it should have followed the Sunshine Law and held its meetings in public.

We also found that the **Township of Russell**'s Minor Variance Committee was actually a local board subject to the open meeting rules. We recommended that in future, the township's council should implement a procedure by-law providing for public notice of committee meetings.

## Exceptional Circumstances

There are nine exceptions to the rule that municipal meetings must be conducted in public. They are listed in section 239 of the *Municipal Act*. They are:

Municipal officials **may** consider the following subjects behind closed doors:

1. The security of the property of the municipality or local board;
2. Personal matters about an identifiable individual, including municipal or local board employees;
3. A proposed or pending acquisition or disposition of land by the municipality or local board;
4. Labour relations or employee negotiations;
5. Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
6. Advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
7. A matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act; and
8. Education and training of the members of the council, local board or committee and no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making.

And they **must** consider the following topic in a closed meeting:

9. A request under the *Municipal Freedom of Information and Protection of Privacy Act*.

As the Ombudsman has often pointed out, the law clearly states that closed meetings are not mandatory in the first eight circumstances. The exceptions should be interpreted narrowly.

Nevertheless, we frequently see cases were municipalities have stretched or misapplied these exceptions to justify closed discussions. A few examples follow.

### Security of property

The "security of property" exception is normally intended to cover items relating to protection of municipal property from physical loss or damage and protection of public safety in connection with municipal property. We occasionally receive complaints about meetings closed under an overly broad interpretation of this exception. For instance, in November 2011, council for the **Municipality of Morris-Turnberry** used it to support closing a meeting where firefighting options were generally discussed, but there were no specific concerns relating to security of municipal property.

## Personal matters about an identifiable individual

We have had many complaints about meetings that were closed under this exception, even though specific individuals or personal issues were not addressed.

One striking example was in February 2012, when the council for the **Township of Leeds and the Thousand Islands** wrongly attempted to shield discussion of a 60% pay hike for themselves under this exception. The meeting clearly involved council members in their professional capacity, not "personal matters."

The **City of Hamilton** council improperly used the exception in June 2011 to justify consideration of issues relating to the dissolution of the Hamilton Entertainment Convention Facilities Inc. No board members or employees were identified or discussed and nothing of a personal nature appeared to be involved. The City Solicitor later indicated that council had considered advice "subject to solicitor-client privilege." Still, this was not the reason council cited for closing the meeting.

The **Town of Midland** council held closed budget meetings in December 2011 that potentially affected readily identifiable individuals and thus came within this exception. But council went on to discuss other things at the closed meeting, which was improper.

Council for the **Township of The North Shore** also misused this "personal matters" exception in January 2012 to close a meeting to discuss publicly accessible information about the number of water valves on various properties.

## Education or training

This exception is often misunderstood or too broadly applied – multiple times, in the case of council for the **Town of Amherstburg**. In his December 2011 report, the Ombudsman found the town used "education or training" to justify closing meetings to discuss such items as strategic planning, the official plan and zoning by-law, and backflow prevention, even though the discussion went beyond the intent of the exception and included consideration of specific business.

In January 2012, council for the **Town of Midland** used this exception to close a meeting where numerous items of council business were discussed – in fact, the Ombudsman found nothing discussed could be appropriately described as "education or training."

## Litigation or potential litigation

This exception allows for private discussion when municipalities are seriously contemplating commencing court or tribunal proceedings, responding to the real threat of having to defend against litigation, or already engaged in litigation. But we have found this exception tends to be overzealously applied – often in circumstances where litigation is actually nowhere on the horizon.

Council for the **United Townships of Head, Clara and Maria** used it to close a meeting in October 2011 where there was only speculation about the prospect of litigation involving a code of conduct complaint against a councillor. However, the same meeting included another item that did fit the exception, and we received conflicting information about details of the meeting.

The council for the **Municipality of Lambton Shores** closed a meeting in November 2011, where litigation was discussed as a possible consequence of a breach of an agreement – but there were no actual legal proceedings, either ongoing or imminent. OMLET staff suggested that the exception relating to advice "subject to solicitor-client privilege" would have been more appropriate.

### A matter under another Act

Municipal bodies rarely use this exception, but it was improperly used by council for the **Town of Amherstburg** to support closing two of the meetings the Ombudsman reported on in December 2011.

At one meeting, council dealt with appointments to the Library and Police Services Boards, and at another, it considered appointing a member to the Police Services Board and two councillors to a municipal committee. There was no "other Act" providing council with the authority to close these meetings.

## Voting in the Dark

The *Municipal Act* is quite clear in its admonition against voting in closed meetings – unless the vote is for procedural matters or for giving directions, e.g., to staff. Nonetheless, municipalities often engage in improper voting during closed meetings.

In three of four **Town of Amherstburg** meetings we reviewed in 2011, council voted behind closed doors, sometimes through an informal "show of hands" – contravening both the *Municipal Act* and the town's own procedure by-law.

Our investigation in the **Town of Midland** also revealed that councillors voted informally and illegally in several closed meetings in late 2011 and early 2012 – including to address their own salaries and benefits.

## Keeping the Record Straight

Municipalities, local boards and their committees are required to record "without note or comment" all resolutions, decisions and other proceedings at meetings – whether the meetings are open or closed. But we have found records for open meetings tend to be far more detailed and informative than for closed ones. In fact, some municipalities barely keep records of closed meetings at all.

Our **Town of Midland** investigation found council's closed meeting minutes did not accurately record what had occurred and lacked any information about directions given to staff during these sessions.

The Ombudsman recommends that municipalities keep a comprehensive written record of closed meetings – and better yet, that they be digitally recorded (audio or video).

# Communications and Outreach

The Ombudsman feels strongly that awareness and education – of the public and municipal officials alike – are key to improving transparency of local governments across Ontario and ensuring the Sunshine Law is properly and consistently implemented across the province.

To that end, since 2008, our Office has created special communications products to help everyone in Ontario understand the rules under the *Municipal Act*, the complaints process and the Ombudsman's procedures. The Ombudsman and OMLET staff have also visited municipalities across the province and made numerous other public appearances to answer questions about the open meeting requirements and our investigations.

Our pocket-sized *Sunshine Law Handbook* provides an at-a-glance view of the exceptions allowed under the *Municipal Act* section 239, frequently asked questions about the law and the Ombudsman's process, as well as tips for municipal officials and members of the public who wish to complain. The handbook has so far had two editions and copies have been distributed to every municipal councillor and clerk in Ontario – first in 2008, and again after the 2010 municipal elections – some **10,000** copies to date. It is also available to the public and on our website. (The front cover of this report also includes a card that councillors and the public can use as a portable guide to the rules. Additional cards can be obtained through our office.)

August 27, 2012: Ombudsman André Marin addresses members of the Strategic Priorities and Policy Committee for the City of London, Ont.

Open meetings issues and OMLET investigations have also attracted a considerable amount of media interest in recent years – with 2011-2012 being the highest yet. Traffic on the Ombudsman's website and social media sites (Facebook, Twitter, YouTube) also demonstrates strong public interest in these investigations.

Our website, redesigned in mid-2012, has a special section for **Municipal Investigations** where all the Ombudsman's reports can be found, as well as a database – **"Find Your Municipality"** – where users can search to find out who the closed meeting investigator is in every municipality in the province.

Ever since late 2007, when municipalities first started appointing investigators and asking questions about how the complaints regime would work, the Ombudsman and staff have visited and addressed councils upon request. The first was the **Town of Fort Erie**, where the Ombudsman appeared before council in December 2007. OMLET staff made similar appearances in those early days before the councils for the **Town of Halton Hills** and the **Regional Municipality of Niagara**. In the intervening years, they have also made numerous public speeches on the Sunshine Law, including at conferences of municipal officials.

This past year has been particularly active and productive, as OMLET staff made presentations to the councils for the **Town of Amherstburg** and the **Town of South Bruce Peninsula**, as well as to the clerks for the municipalities of **Essex County**. The Ombudsman addressed council for the **City of London** in August 2012 – video of his presentation and question-and-answer session with councillors was webcast live from our website. More than **200** people watched the webcast live and many more have viewed it since on our website.* The Ombudsman is also slated to address council for the **City of Greater Sudbury** in December 2012.

* The video can be viewed at: http://www.ombudsman.on.ca/Resources/Reports/City-of-London-(2).aspx

## Township of Adelaide-Metcalfe

In response to a complaint about a closed meeting in March 2012, OMLET found council was entitled to discuss legal and personnel issues in closed session. However, some of the issues considered were added to the agenda at the last minute. While there was some evidence that the matters were urgent, we advised the council that, as a general rule, it should provide advance public notice of all items to be considered in a closed meeting. We also emphasized that resolutions authorizing closed sessions must state the general nature of the matter to be considered, and, as a best practice, should also refer to the specific *Municipal Act* exception used to justify closing the meeting.

A private meeting in March 2012 that was hosted by a wind turbine development company and attended by two of five council members also prompted complaints. In this case, OMLET determined that the company had invited landowners to discuss the merits of wind turbines and no township business was discussed or furthered. For this reason, it did not constitute a "meeting" of council.

## Town of Amherstburg

In December 2011, the Ombudsman issued his report *Behind Closed Doors*, in which he concluded that Amherstburg council had repeatedly contravened the *Municipal Act* and its own procedure by-law.

Council improperly discussed many issues in closed session, misusing the law's "education or training" and "a matter under another Act" exceptions – and routinely engaged in improper voting behind closed doors, the Ombudsman found.

The investigation identified other problematic practices, including incomplete and inaccurate meeting agendas, failure to report back publicly in an informed way about closed meetings, and adding meeting items without prior notice. The Ombudsman made seven recommendations to encourage council's compliance with the Act and greater transparency in its closed meeting practices.

But when Amherstburg council received the report, it considered it in two closed meetings. This prompted another investigation, but this time council was not found to have violated the Act, because the meetings were closed in order to consider matters subject to solicitor-client privilege (legal advice from the town's solicitor), and the correct procedures were followed.

In February 2012, our OMLET team provided training to Amherstburg council on the open meeting requirements. The council has since embraced the Ombudsman's recommendations for more open practices and implemented a new policy for closed meetings.

## City of Clarence-Rockland

A series of informal meetings involving four of nine council members in December 2010 attracted a lot of public speculation. OMLET's review of complaints about the meetings found that these members were seeking information that would undoubtedly influence future decision making, and violated the spirit of the open meeting provisions. We warned council members to be extremely careful not to allow conversation at such gatherings to stray into laying the groundwork for council business.

In addition, OMLET found that a general discussion of "poor quality client services" that took place at a meeting in May 2011 didn't come within the permissible exceptions to the open meeting requirements.

We also reviewed a closed session in June 2011 where a number of items were added at the last minute to the meeting agenda. OMLET advised council that matters should not be discussed in these circumstances unless they are urgent, and called on council to amend its procedure by-law to require a formal resolution before a new item is added to a meeting agenda.

## Municipality of Grey Highlands

Wind turbines have been a controversial subject in municipalities throughout Ontario in recent years. It was no surprise, then, that a lunch meeting between three members of Grey Highlands council, the Chief Administrative Officer, and a developer of commercial wind turbines attracted public complaint. It was suggested that the lunch was an improper closed meeting that influenced a council vote to award a wind turbine contract later that same day.

During OMLET's review, we were told that wind turbine company representatives had simply arrived at the same restaurant where municipal officials were meeting for lunch, and asked to join the group. We were advised that there was no discussion about the items on the afternoon meeting agenda.

Shortly after the lunch, council met in open session and considered staff advice that there was no legal reason not to approve agreements with the wind turbine company, except for an issue relating to one location. After receiving legal advice in closed session, council voted in public to approve building permits for wind turbines that were provided for in an earlier agreement.

While our review did not find the lunch meeting violated the *Municipal Act*, OMLET staff advised council that such gatherings in close proximity to official council meetings naturally attract suspicion. Council members must be vigilant in these cases to ensure that casual social conversation does not drift into improper areas.

# Case Summaries

## City of Hamilton

OMLET investigated a complaint that three councillors from the city's NHL Proposal Sub-Committee, along with another councillor, violated the open meeting rules when they met for breakfast in January 2011 with the coach/general manager of a local hockey team and the president of the Edmonton Oilers.

We found that sub-committee business was not discussed in any material way during the breakfast, nor were any decisions made or groundwork set for future decisions. The Ombudsman concluded the breakfast was an informal get-together and not a meeting subject to the open meeting requirements of the *Municipal Act*. However, he warned councillors that they should be cautious about such gatherings, because they naturally attract suspicion and conjecture, and it can be difficult to convince the public that no improper discussions took place.

## United Townships of Head, Clara and Maria

Our investigation of two closed meetings in the fall of 2011 confirmed that discussions relating to harassment complaints and a code of conduct complaint fit within the "personal matters about an identifiable individual" exception. However, the Ombudsman concluded that the "litigation or potential litigation" exception was improperly applied to one of the topics discussed.

The Ombudsman also recommended that council pass resolutions for future closed meetings, clearly itemizing which exception applies to which agenda item. He also cautioned council not to add matters to the agenda at the last minute unless they are urgent or there are compelling reasons to suspend the normal public notice procedures. As well, he encouraged council to report publicly on what was discussed in closed session – at least in a general way.

## Municipality of Lambton Shores

A local controversy about sewage management resulted in a number of complaints about this council, including that three members of council had met informally – and illegally – with municipal staff, some community members and representatives from a consulting firm to discuss management of wastewater.

We learned that municipal staff had arranged the meeting to allow community members an opportunity to discuss concerns about a sewage expansion project with the consulting firm leading the project. We determined the meeting was not subject to the open meeting rules, as it did not involve the exercise of council's authority or laying the groundwork for future council decision-making, but advised the municipality that this type of closed-door gathering naturally raises public concerns about a lack of transparency.

## Township of Larder Lake

We reviewed an "emergency" special meeting held in September 2011 to discuss preventing impending action on the part of a resident in breach of an agreement with the township as well as local zoning.

Although this item was appropriate for discussion in closed session, our review found that notice was not provided to the public of the emergency meeting, and council failed to pass a proper resolution authorizing the closed session. We noted that, even in cases of urgency, basic procedural requirements must be observed. We also advised the township to amend its procedure bylaw to provide for public notice of emergency meetings.

# Case Summaries

## City of London

London, Ont. was the first Canadian jurisdiction to evict the "Occupy" movement protesters in late 2011. We received five complaints about the closed meeting on November 7, 2011, when council considered legal advice and potential litigation relating to the occupation of a downtown park. Our investigation determined the closed meeting was permitted under the Act.

In February 2012, six council members met for lunch shortly before three committee meetings and a council meeting where they voted on the final budget. We received three complaints and there was considerable public speculation as to whether the lunch was an illegally closed strategy meeting.

Our investigation confirmed that the lunch attendees constituted a "quorum" with the legal authority to transact business on behalf of a number of committees, including two of those meeting that day. However, we found that no committee business was actually discussed during the lunch.

The Ombudsman concluded that the luncheon did not violate the Sunshine Law, but he warned councillors that meeting in a local restaurant just before a critical and controversial vote on the budget was ill-conceived and made them a natural target for public suspicion.

## Town of Midland

We investigated three complaints about multiple closed meetings in Midland between December 2011 and March 2012 and found council had improperly used the "education or training" and "personal matters about an identifiable individual" exceptions to discuss items that should have been considered in public. We also found that the council routinely voted illegally behind closed doors.

Our investigation also revealed the town was following several problematic practices, including giving insufficient notice of closed sessions, not keeping adequate records of closed meetings, and failing to report back publicly about closed meetings. The Ombudsman issued eight recommendations to help the town improve its practices, including that it should make audio or video recordings of closed meetings.

## City of Greater Sudbury

We investigated a series of closed meetings held by council to discuss ordering an audit and peer review of its Auditor General's office. These meetings were closed under the "personal matters about an identifiable individual" exception. It was alleged that the meetings should have been open, since the discussions did not involve "personal matters" about the Auditor General himself, but were about his office.

The Ombudsman found that the discussions at these meetings did fit within the cited exception. However, he spoke out strongly about the lack of co-operation our Office received during the investigation. Every member of council asked to have a lawyer from the city with them during our interviews. When they were advised that our process did not allow this, 10 refused to be interviewed – only the Mayor, two councillors and the Clerk participated. The Ombudsman advised council that if faced with refusal to co-operate in future, he would consider using his Office's powers under the *Ombudsman Act* to require witnesses to participate, or face penalties including fines or potential imprisonment.

# Your Feedback

"Bravo to the Ombudsman for engaging citizens directly via social media instead of relying on the filter and bias of traditional media and other intermediaries. It's refreshing and welcome and I wish more of our leaders would do so."

Comment by user "monkian" on thespec.com, January 12, 2012

"@Ont_Ombudsman Would like to see private closed meeting investigators abolished, in favour of your office being sole investigator."

@justplaincarrie via Twitter, January 12, 2012

"One can only hope local #HamOnt councillors are listening to Marin, great discussion. @Ont_Ombudsman"

@markalanwhittle via Twitter, February 22, 2012

"@Ont_Ombudsman The cut and thrust of today provided real insight into #OpenMtgs."

@DL_Silva via Twitter, August 27, 2012 (after London, Ont. council appearance)

"Thank you for your recent investigation of Sudbury City Council. It is very comforting to know our politicians are being held to the moral standard that us citizens of Sudbury aspire to."

Spencer Chaput, Sudbury

# In the media

> Obviously, the Ombudsman's office takes a serious view of openness and transparency. But it's too bad it can only shame city councils for bending and breaking rules. It has no power to either penalize or force them to be more vigilant about honouring the public's right to know... Openness and scrutiny are not a privilege; they're a public right. Anytime the mayor, councillors, or senior staff forget that, someone needs to remind them. Today, it's the Ombudsman; tomorrow, hopefully, it will be the people elected to serve us.

Andrew Dreschel, *Hamilton Spectator*, January 11, 2012

> It is nice to hear from the Ombudsman of Ontario's office this week in regard to Kearney council and its meeting practices... Transparency in governance is something near and dear to the objectives of this or any other news organization of substance and it is good to see that there is a body out there paying attention to the nuances of what needs to be in the open.

Editorial, *Cottage Country Now*, August 18, 2011

> I've heard people wonder why Ontario Ombudsman Andre Marin has the power to investigate city council — and lament that his probe will be a pricey process for city hall. Well, he can. And it won't cost the city a cent.

Patrick Maloney, *London Free Press* blog, November 30, 2011

> [The Ombudsman] and his office are strong allies for those of us who believe greater transparency is an urgent democratic priority in our city, province and country.

Editorial, *Hamilton Spectator*, February 25, 2012

> The Ontario Ombudsman has issued his report on closed meetings held by Amherstburg town council and, for the second time, the municipality has had its knuckles rapped for the way the meetings were handled... One has to hope, at the very least, that the municipality has learned its lessons and is constantly finding ways to improve communications and relations with the public.

Editorial, *Amherstburg Echo*, January 11, 2012

## Your Feedback

# APPENDIX

## Complaint Statistics

**COMPLAINTS RECEIVED AND VIOLATIONS OF THE SUNSHINE LAW FOUND, BY MUNICIPALITY – APRIL 1, 2011 TO AUGUST 31, 2012**

| MUNICIPALITY | Complaints received | Violations found | Best practices suggested |
|---|---|---|---|
| Township of Adelaide-Metcalfe | 6 | 0 | 6 |
| Town of Amherstburg | 12 | 2 | 4 |
| Municipality of Bluewater | 1 | 0 | 0 |
| Municipality of Brockton | 1 | 0 | 0 |
| Municipality of Central Huron | 1 | 0 | 0 |
| City of Clarence-Rockland | 5 | 1 | 1 |
| Township of Edwardsburgh/Cardinal | 1 | 0 | 0 |
| City of Elliot Lake | 6 | 2 | 0 |
| Town of Fort Erie | 15 | 2 | 0 |
| Township of Georgian Bay | 3 | 4 | 1 |
| Grand Bend Area Sewage Treatment Board | 1 | 0 | 1 |
| Town of Gravenhurst | 1 | 0 | 0 |
| City of Greater Sudbury | 3 | 0 | 0 |
| Municipality of Grey Highlands | 1 | 0 | 0 |
| City of Hamilton | 4 | 1 | 0 |
| United Townships of Head, Clara and Maria | 1 | 0 | 3 |
| Township of Howick | 2 | 1 | 0 |
| Municipality of Huron East | 1 | 2 | 2 |
| County of Huron | 1 | 0 | 0 |
| Town of Kearney | 3 | 2 | 1 |
| Town of Lakeshore | 1 | 0 | 0 |
| Municipality of Lambton Shores | 5 | 2 | 2 |
| Township of Larder Lake | 1 | 2 | 0 |
| Township of Leeds and the Thousand Islands | 3 | 2 | 1 |
| City of London | 10 | 0 | 0 |
| Municipality of Magnetawan | 3 | 0 | 0 |
| Town of Mattawa | 1 | 0 | 0 |
| Town of Midland | 2 | 7 | 2 |
| Township of Morley | 2 | 0 | 3 |
| Municipality of Morris-Turnberry | 1 | 2 | 0 |
| District Municipality of Muskoka | 1 | 0 | 3 |
| Township of Nairn and Hyman | 1 | 2 | 1 |
| City of Niagara Falls | 3 | 2 | 1 |
| Regional Municipality of Niagara | 5 | 0 | 2 |
| City of Oshawa | 4 | 0 | 0 |
| Town of Penetanguishene | 2 | 0 | 0 |
| Municipality of Powassan | 2 | 0 | 0 |
| United Counties of Prescott and Russell | 1 | 0 | 0 |
| Township of Russell | 2 | 2 | 0 |
| Township of Seguin | 1 | 0 | 0 |
| Town of South Bruce Peninsula | 3 | 6 | 0 |
| Municipality of South Huron | 1 | 0 | 0 |
| Municipality of St. Charles | 1 | 0 | 0 |
| Township of The North Shore | 2 | 1 | 0 |
| Municipality of Whitestone | 1 | 0 | 0 |
| **TOTAL** | **128** | **45** | **34** |

*NOTE: In some cases, we received multiple complaints about the same meeting, and/or found multiple violations relating to the same meeting or complaint.*

# APPENDIX

## Complaint Statistics

**MUNICIPALITIES WHERE THE OMBUDSMAN IS THE INVESTIGATOR FOR CLOSED MEETING COMPLAINTS (APRIL 1, 2011 TO AUGUST 31, 2012)**

| | |
|---|---|
| 1. | Adelaide-Metcalfe, Township of |
| 2. | Ajax, Town of |
| 3. | Alberton, Township of |
| 4. | Alfred and Plantagenet, Township of |
| 5. | Amherstburg, Town of |
| 6. | Armour, Township of |
| 7. | Armstrong, Township of |
| 8. | Arnprior, Town of |
| 9. | Arran-Elderslie, Municipality of |
| 10. | Ashfield-Colborne-Wawanosh, Township of |
| 11. | Assiginack, Township of |
| 12. | Augusta, Township of |
| 13. | Baldwin, Township of |
| 14. | Billings, Township of |
| 15. | Black River-Matheson, Township of |
| 16. | Blind River, Town of |
| 17. | Bluewater, Municipality of |
| 18. | Bonfield, Township of |
| 19. | Bracebridge, Town of |
| 20. | Brethour, Township of |
| 21. | Brockton, Municipality of |
| 22. | Bruce Mines, Town of |
| 23. | Brudenell, Lyndoch & Raglan (Township of) |
| 24. | Burk's Falls, Village of |
| 25. | Burpee and Mills, Township of |
| 26. | Calvin, Township of |
| 27. | Casey, Township of |
| 28. | Casselman, Village of |
| 29. | Central Huron, Municipality of |
| 30. | Central Manitoulin, Township of |
| 31. | Chamberlain, Township of |
| 32. | Champlain, Township of |
| 33. | Chapple, Township of |
| 34. | Charlton and Dack, Municipality of |
| 35. | Chisholm, Township of |
| 36. | Clarence-Rockland, City of |
| 37. | Cobalt, Town of |
| 38. | Cochrane, Town of |
| 39. | Cockburn Island, Township of |
| 40. | Coleman, Township of |
| 41. | Dawn-Euphemia, Township of |
| 42. | Dawson, Township of |
| 43. | Dorion, Township of |
| 44. | Dubreuilville, Township of |
| 45. | Dufferin, County of |
| 46. | Dysart, Dudley, Harcourt, Guilford, Harburn, Bruton, Havelock, Eyre and Clyde, United Townships of |
| 47. | East Hawkesbury, Township of |
| 48. | Edwardsburgh/Cardinal, Township of |
| 49. | Elliot Lake, City of |
| 50. | Englehart, Town of |
| 51. | Enniskillen, Township of |
| 52. | Essex, Town of |
| 53. | Evanturel, Township of |
| 54. | Fauquier-Strickland, Township of |
| 55. | Fort Erie, Town of |
| 56. | Front of Yonge, Township of |
| 57. | Gananoque, Town of |
| 58. | Gauthier, Township of |
| 59. | Georgian Bay, Township of |
| 60. | Gillies, Township of |
| 61. | Gordon/Barrie Island, Municipality |
| 62. | Gore Bay, Town of |
| 63. | Gravenhurst, Town of |
| 64. | Greater Sudbury, City of |
| 65. | Grey Highlands, Municipality of |
| 66. | Grimsby, Town of |
| 67. | Halton Hills, Town of |
| 68. | Hamilton, City of |
| 69. | Harley, Township of |
| 70. | Harris, Township of |
| 71. | Hawkesbury, Town of |
| 72. | Head, Clara and Maria, Township of |
| 73. | Hearst, Town of |
| 74. | Hilliard, Township of |
| 75. | Hilton Beach, Village of |
| 76. | Hilton, Township of |
| 77. | Hornepayne, Township of |
| 78. | Howick, Township of |
| 79. | Hudson, Township of |
| 80. | Huntsville, Town of |
| 81. | Huron East, Municipality of |
| 82. | Huron, County of |
| 83. | James, Township of |
| 84. | Jocelyn, Township of |
| 85. | Johnson, Township of |
| 86. | Joly, Township of |
| 87. | Kawartha Lakes, City of |
| 88. | Kerns, Township of |
| 89. | Killarney, Municipality of |
| 90. | Kitchener, City of |
| 91. | La Vallee, Township of |
| 92. | Laird, Township of |
| 93. | Lake of Bays, Township of |
| 94. | Lake of the Woods, Township of |
| 95. | Lakeshore, Town of |
| 96. | Lambton Shores, Municipality of |
| 97. | Lambton, County of |
| 98. | Larder Lake, Township of |

# APPENDIX

## Complaint Statistics

### MUNICIPALITIES WHERE THE OMBUDSMAN IS THE INVESTIGATOR FOR CLOSED MEETING COMPLAINTS (APRIL 1, 2011 TO AUGUST 31, 2012)

| | |
|---|---|
| 99. | LaSalle, Town of |
| 100. | Latchford, Town of |
| 101. | Laurentian Hills, Town of |
| 102. | Leamington, Municipality of |
| 103. | Leeds and the Thousand Islands, Township of |
| 104. | London, City of |
| 105. | Macdonald, Meredith and Aberdeen Additional, Township of |
| 106. | Machar, Township of |
| 107. | Magnetawan, Municipality of |
| 108. | Marathon, Town of |
| 109. | Markstay-Warren, Municipality of |
| 110. | Matachewan, Township of |
| 111. | Mattawa, Town of |
| 112. | Mattawan, Township of |
| 113. | Mattice Val Côté, Township of |
| 114. | McDougall, Township of |
| 115. | McGarry, Township of |
| 116. | McKellar, Township of |
| 117. | McMurrich/Monteith, Township of |
| 118. | Midland, Town of |
| 119. | Minden Hills, Township of |
| 120. | Montague, Township of |
| 121. | Moonbeam, Township of |
| 122. | Moosonee, Town of |
| 123. | Morley, Township of |
| 124. | Morris-Turnberry, Municipality of |
| 125. | Muskoka, District Municipality of |
| 126. | Nairn and Hyman, Township of |
| 127. | Neebing |
| 128. | Newbury, Village of |
| 129. | Niagara Falls, City of |
| 130. | Niagara, Regional Municipality of |
| 131. | Nipigon, Township of |
| 132. | Nipissing, Township of |
| 133. | North Dumfries, Township of |
| 134. | Northeastern Manitoulin and The Islands, Town of |
| 135. | Oil Springs, Village of |
| 136. | Opasatika, Township of |
| 137. | Orangeville, Town of |
| 138. | Oshawa, City of |
| 139. | Papineau-Cameron, Township of |
| 140. | Pelham, Town of |
| 141. | Pembroke, City of |
| 142. | Penetanguishene, Town of |
| 143. | Perry, Township of |
| 144. | Petrolia, Town of |
| 145. | Pickering, City of |
| 146. | Plummer Additional, Township of |
| 147. | Plympton-Wyoming, Town of |
| 148. | Port Colborne, City of |
| 149. | Powassan, Municipality of |
| 150. | Prescott and Russell, United Counties of |
| 151. | Prescott, Town of |
| 152. | Prince, Township of |
| 153. | Rainy River, Town of |
| 154. | Russell, Township of |
| 155. | Ryerson, Township of |
| 156. | Sables-Spanish Rivers, Township of |
| 157. | Sarnia, City of |
| 158. | Sault Ste. Marie, City of |
| 159. | Seguin, Township of |
| 160. | Shuniah, Municipality of |
| 161. | Sioux Narrows Nestor Falls, Township of |
| 162. | Smooth Rock Falls, Town of |
| 163. | South Algonquin, Township of |
| 164. | South Bruce Peninsula, Town of |
| 165. | South Huron, Municipality of |
| 166. | South River, Village of |
| 167. | Spanish, Town of |
| 168. | St. Catharines, City of |
| 169. | St. Charles, Municipality of |
| 170. | St. Joseph, Township of |
| 171. | Tarbutt and Tarbutt Additional, Township of |
| 172. | Tehkummah, Township of |
| 173. | Temagami, Municipality of |
| 174. | Temiskaming Shores, City of |
| 175. | The Nation, Municipality of |
| 176. | The North Shore, Township of |
| 177. | Thessalon, Town of |
| 178. | Thornloe, Village of |
| 179. | Thorold, City of |
| 180. | Timmins, City of |
| 181. | Tiny, Township of |
| 182. | Val Rita-Harty, Township of |
| 183. | Welland, City of |
| 184. | Wellington, County of |
| 185. | West Lincoln, Township of |
| 186. | West Nipissing, Municipality of |
| 187. | Westport, Village of |
| 188. | White River, Township of |
| 189. | Whitestone, Municipality of |
| 190. | Whitewater Region, Township of |
| 191. | Woolwich, Township of |

# APPENDIX

## Complaint Statistics

| MOST COMMONLY USED REASONS FOR CLOSING MEETINGS – APRIL 1, 2011 TO AUGUST 31, 2012 (exceptions cited under the *Municipal Act, 2001*, section 239) | |
|---|---|
| 1 | Personal matters about an identifiable individual |
| 2 | Solicitor-client privilege |
| 3 | Litigation or potential litigation |

ONTARIO'S WATCHDOG

# 2011-2012 **OMLET ANNUAL REPORT**

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